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India: Feasibility of Relocation of Sikhs and Members of the Shiromani Akali Dal (Mann) Party

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India: Feasibility of Relocation of Sikhs and Members of the Shiromani Akali Dal (Mann) Party

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SUMMARY There appear to be no legal obstacles for members of the Sikh faith to relocate to other areas of India. However, depending on the circumstances and financial position of the person, it may be practically difficult to relocate. According to some reports, if a person seeks to escape the attention of local police and is not of interest to central authorities, then internal relocation is feasible. Only hard-core militants appear to be of interest to central Indian authorities. According to a US government report, holding pro-Khalistani views would not make someone a high-profile militant. However, most reports do not specifically address the situation of how members of the Shiromani Akali Dal (Mann) Party who relocate in fear of persecution are treated.

I. Legal Perspective on the Relocation of Sikhs

No provisions were located under Indian law that prohibit or restrict members of the Sikh religion from relocating to other parts of India from the Province of Punjab. Government reports by US and other foreign immigration authorities over the last fifteen years likewise indicate that there are no legal obstacles preventing Sikhs from moving to other parts of the country.¹ More generally, a February 2015 country information and guidance on internal relocation by the UK's Home Office notes that

[t]here are no legal restrictions preventing relocation to most parts of the country, including to all the major cities. Although there are no special controls with regard to the movement of women and certain vulnerable groups, their ability to move freely may be restricted, depending on personal circumstances.²

¹ See, e.g., Bureau of Citizenship and Immigration Services (now USCIS) Resource Information Center, *India: Information on Relocation of Sikhs from Punjab to Other Parts of India*, IND03003.ZSF (May 16, 2003), <https://www.uscis.gov/tools/asylum-resources/ric-query-india-16-may-2003-0>, archived at <https://perma.cc/FY6Z-NUM9>; see also Immigration and Refugee Board of Canada (IRBC), *India: Ability of Sikhs to Relocate within India*, IND100771.EX (Jan. 18, 2006), <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=452347>, archived at <https://perma.cc/G3MN-YZTA>; Australian Government Refugee Review Tribunal, *Country Advice: India*, IND37728 (Nov. 26, 2010), available at https://www.ecoi.net/file_upload/2107_1317284132_ind37728.pdf, archived at <https://perma.cc/TG8J-MQ7L>.

² UK Home Office, *Country Information and Guidance India: Background Information, Including Actors of Protection, and Internal Relocation* para. 1.2.7 (Feb. 2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565776/CIG-india-background-v2-February-2015.pdf, archived at <https://perma.cc/T75U-CHM2>.

An Operational Guidance note issued in June 2012 by the UK Border Agency stated that “Punjabi Sikhs are able to relocate to another part of India and there are Sikh communities all over India.”³ In addition, the 2011 US State Department *Country Report on Human Rights Practices* states that “[t]he law [of India] provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.”⁴ A 2013 response to an information request issued by the Immigration and Refugee Board of Canada (IRBC) on the ability of Sikhs to relocate notes as follows:

Several sources indicate that Sikhs do not face difficulties relocating to other areas of India. Sikhs are reportedly free to move to any state in India. The interim executive director of AHRC [Asian Human Rights Commission] explained that Sikhs face neither legal nor procedural problems relocating. According to the 2001 census, approximately 41 million Indians had migrated between states. For her part, the legal researcher at VFF stated that there is no law against relocating⁵

However, in-country movement is restricted for all Indian citizens in relation to certain areas of the country where special permits to travel are required. The special permit, known as the Inner Line Permit (ILP), must be obtained by Indian citizens who reside outside of specified protected areas (northeastern states), such as Arunachal Pradesh, in order to travel to those areas. The permit is issued under the Bengal Eastern Frontier Regulation, 1873. These special permits do not target members of a specific religious community but apply to all citizens residing outside these protected areas.

II. Other Impediments to Relocation

In 2013 the Research Directorate of the Immigration and Refugee Board of Canada provided the following breakdown of the population of Sikhs living in the State of Punjab and other Indian states:

According to statistics from the 2001 census, there are over 19 million Sikhs in India, representing approximately 1.9 percent of the population. The majority of Sikhs live in Punjab. According to the census, over 14 million live in Punjab, accounting for approximately 60 percent of the Punjab population.

There are also sizable Sikh minorities in other states. According to the 2001 census, there are Sikhs living in all states in India, with over one million in Haryana, and populations of over 100,000, but less than one million in the states or union territories of Chandigarh,

³ Home Office, UK Border Agency, *Operational Guidance Note: India* para. 3.6.12 (June 2012), available at <http://www.refworld.org/publisher,UKHO,COUNTRYPOS,IND,4fe83a892,0.html>, archived at <https://perma.cc/G7BQ-XZTC>.

⁴ DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011: INDIA, <https://www.state.gov/j/drl/rls/hrrpt/2011/humanrightsreport/index.htm?dclid=186463#wrapper>.

⁵ IRBC, *India: Situation of Sikhs outside the State of Punjab*, IND104369.E (May 13, 2013), <http://irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=454556>, archived at <https://perma.cc/LY76-VQ3C> (citations omitted).

Delhi, Jammu and Kashmir, Madhya Pradesh, Maharashtra, Rajasthan, Uttar Pradesh, and Uttaranchal.⁶

More generally, a February 2015 country information and guidance document on internal relocation produced by the UK Home Office notes as follows:

Internal relocation to another area of India is generally viable but consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular person. Decision makers need to consider the ability of the persecutor to pursue the person in the proposed site of relocation, and whether effective protection is available in that area. Decision makers will also need to consider the age, gender, health, level of education, ethnicity, religion, financial circumstances/ability to secure access to a livelihood and/or support network of the person, as well as the security, human rights and socioeconomic conditions in the proposed area of relocation, including their ability to sustain themselves.⁷

According to an April 2015 report, for religious minorities in particular, “internal relocation to another area of India may be an option, but will depend on the nature and origin of the threat as well as the personal circumstances of the person as long as it would not be unduly harsh to expect them to do so.”⁸

A 2008 Operational Guidance Note by the UK Border Agency noted that “Sikhs from the Punjab are able to move freely within India and internal relocation to escape the attentions of local police in their home area would not be unduly harsh.”⁹ As long as “the individual is not of interest to the central authorities, internal relocation is feasible.”¹⁰ However, as noted by Country Advice of the Australian Refugee Review Tribunal, those Punjabi Sikhs “who fear ill treatment by central authorities [versus local police] . . . cannot relocate within India to avoid being targeted.”¹¹

The 2012 report by the UK Border Agency states that the situation of “single women, divorcees with or without children, and widows may differ from the situation for men as it may be difficult for women on their own to find secure accommodation.”¹²

⁶ *Id.* (citations omitted); see also Australia: Refugee Review Tribunal, RT Case No. 1106960, [2012] RRTA 194, para. 46 (Mar. 23, 2012), http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/RRTA/2012/194.html?context=1;query=1106960;mask_path=), archived at <https://perma.cc/5LDM-84FY>.

⁷ UK Home Office, *Country Information and Guidance India: Background Information*, *supra* note 2, para. 1.2.9.

⁸ UK Home Office, *Country Information and Guidance India: Religious Minority Groups* 6 (Apr. 2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565774/CIG-India-Religious-groups-v1-April-2015.pdf, archived at <https://perma.cc/BL34-MLUK>.

⁹ Home Office, UK Border Agency, *Operational Guidance Note: India* para. 3.6.13 (Apr. 2008), available at <http://www.refworld.org/publisher,UKHO,COUNTRYPOS,IND,48084c992,0.html>, archived at <https://perma.cc/AUA7-P26D>.

¹⁰ *Id.*

¹¹ Australian Government Refugee Review Tribunal, *Country Advice: India*, IND37728, *supra* note 1, at 2.

¹² Home Office, UK Border Agency, *Operational Guidance Note: India*, *supra* note 3, para. 2.4.4.

A 2013 IRBC response to an information request notes that, despite the lack of legal restrictions on the ability of Sikhs to relocate, there may be some practical challenges:

[I]t would be “very hard,” particularly for Sikh farmers, who account for the majority of Sikhs in Punjab. [A legal researcher at Voices for Freedom (VFF) Asia] explained that it would be possible for Sikhs who are skilled and educated to find employment outside Punjab, but that it would be difficult for those who are unskilled and uneducated. She also noted that it would be difficult for Punjabi Sikhs to relocate to the southern part of the country due to language barriers. She also said that some states—such as Rajasthan, Himachal Pradesh, Jammu and Kashmir and Maharashtra—have restrictions on people from out of state owning land. Media sources corroborate that there are regulations limiting non-state residents from owning land in Jammu and Kashmir and Himachal Pradesh. Further information about land regulations could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. Sources note that traditional Sikhs are easily identifiable due to their beards and turbans. According to the VFF legal researcher, this poses a potential challenge for Sikhs to relocate as they are “easily recognizable during any communal riots” in states outside Punjab. The UC Berkeley academic also noted that the Punjabi language and the Punjabi accent in Hindi are distinctive and are other factors that make Sikhs identifiable.¹³

A 2013 UK Home Office report notes as follows:

Although some applicants claim to fear persecution by terrorists or other non-state agents, there is no evidence that, following the end of the counter-insurgency period, such persecution takes place in Punjab. Nevertheless, there generally exists the option for those who encounter difficulties to seek national protection or to relocate internally (although, for single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh). Punjabi Sikhs are able to relocate to another part of India and there are Sikh communities all over India.¹⁴

According to the same 2013 report, citizens are not required to “register their faith in India and Sikhs are able to practise their religion without restriction in every state of India.”¹⁵ Moreover, according to numerous reports, members of the Sikh religion are able to practice their faith without restriction in all states of India. A 2008 report by the UK Border Agency notes that “[t]here were no checks on a newcomer to any part of India arriving from another part of India, even if the person is a Punjabi Sikh.”¹⁶ In addition, “there is no system of registration of citizens, and often people have no identity cards, which in any event can be easily forged,” according to the same report.¹⁷ A 2006 report by the IRBC states that “Sikhs relocating from Punjab state to other parts of India do not have to register with the police in their area of relocation, unless they are on parole.”¹⁸

¹³ IRBC, *India: Situation of Sikhs outside the State of Punjab*, IND104369.E, *supra* note 5.

¹⁴ Home Office, UK Border Agency, *Operational Guidance Note: India* para. 3.9.15 (May 2013), available at https://www.ecoi.net/file_upload/1226_1368622339_india.pdf, archived at <https://perma.cc/2N2D-653W>.

¹⁵ *Id.*

¹⁶ Home Office, UK Border Agency, *Operational Guidance Note: India*, *supra* note 9, para. 3.6.12.

¹⁷ *Id.*

¹⁸ IRBC, *India: Ability of Sikhs to Relocate within India*, IND100771.EX, *supra* note 1 (citations omitted).

A 2008 UK Home Office report states that Sikhs would have “indiscriminate” access to housing, employment, health care, and education outside the State of Punjab; that prospects for employment would largely depend on skill level; and that there may be isolated cases of discrimination. Access to health care and education largely depends on “their financial situation and their proximity to an urban location.”¹⁹

According to a 2012 Australian Refugee Review Tribunal decision,

[I]n linguistic demography may impact on the suitability of relocation within India. According to the Punjabi website, Punjabi is the “eleventh most popular language of the world . . . [and] has the official language status in Punjab while the other northern India states such as Haryana and Delhi give it the rank of second official language”. There are reportedly also large numbers of Punjabi speakers in Kashmir, Himachal Pradesh and Rajasthan. The University of California (UCLA) Language Materials Project website supports this, stating that there are an estimated 104 million Punjabi speakers worldwide, and [the language] is spoken in a variety of locations such as Punjab, Delhi, Haryana, Jammu, Kashmir and Himachal Pradesh.²⁰

III. Specific Restrictions on Members of the Shiromani Akali Dal (Amritsar/Mann) Party

Most reports describe the situation of internal relocation for Sikhs, including those who are wanted for suspected militancy, but do not specifically consider the situation of members of the Shiromani Akali Dal (Amritsar/Mann) Party.²¹ The main goal of the party and its leader, Simranjit Singh Mann, is the establishment of a separate Sikh state, called Khalistan.

According to a 2003 Report by US Citizenship and Immigration Services, “several experts have suggested that only those considered by police to be high-profile militants are at risk”²² of persecution even if they were to relocate. However, “simply holding pro-Khalistani views—favoring an independent Sikh state in Punjab—would not make an individual a high-profile suspect.”²³

According to the same report, “[s]ome experts have also suggested that a Sikh who relocates could be at risk of persecution if his name is on a list of chronic offenders.”²⁴ However, the report cites

¹⁹ UK Home Office, Border & Immigration Agency, *Country of Origin Information Report: India* para. 19.104 (Jan. 31, 2008), available at http://www.ecoi.net/file_upload/1329_1203410990_242-1202293504-india-310108.pdf, archived at <https://perma.cc/FJ2E-J6RN>.

²⁰ Australia: Refugee Review Tribunal, RT Case No. 1106960, *supra* note 6, para. 47 (citations omitted).

²¹ For a report solely on the Shiromani Akali Dal (Mann) Party, see Australia: Refugee Review Tribunal, *Research Response: India*, RR No. IND34704 (Apr. 22, 2009), available at <http://www.refworld.org/docid/4b6fe24b0.html>, archived at <https://perma.cc/NQS3-W6A8>.

²² USCIS Resource Information Center, *India: Information on Relocation of Sikhs from Punjab to Other Parts of India*, *supra* note 1.

²³ *Id.*

²⁴ *Id.*

an expert professor who states that, “while Sikhs on lists dating from the militancy period are still at risk, it is unlikely that Punjab police have labeled many Sikhs as history sheeters [persons with a criminal history] since then based on suspected militant links.”²⁵ The report again asserts that the police are more concerned with hard-core militants. Nevertheless, the report goes on to state that “evidence suggests that Punjab police at times wrongly place individuals involved in ordinary political activities on chronic offender lists.”²⁶ The report, however, does not specifically address the situation of how members of the Amritsar/Mann Party who relocate in fear of persecution are treated.

A 2005 UK Operational Guidance Note emphasizes that, “[for Sikhs] fearing ill-treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.”²⁷ A 2008 UK Operational Guidance Note also concurs that, “[w]here the applicant’s fear is of ill treatment/persecution by the central authorities, relocation to a different area of the country to escape this threat is not feasible, though it is feasible where the applicant’s fear is of local police and the individual is not of interest to the central authorities.”²⁸

According to a 2013 report by the Research Directorate of the IRBC,

[s]everal sources state that the Punjab police have the ability and authority to track suspects who move to other states, but they must have the cooperation of the police in the other state. In a telephone interview with the Research Directorate, a representative of the New Delhi-based Human Rights Law Network (HRLN), an NGO of lawyers and social activists located throughout India who promote human rights and justice, said that the Punjab police would require a court order and help from the other state’s police in order to track someone who moves to a different state. She expressed the opinion that they would likely only track someone in “extreme” cases.

The interim executive director of the AHRC said that, by law, if someone is wanted for a crime, the state police are supposed to pursue them if they move to another state. However, he added that the police do not “function the way that they should”; describing the policing system in India as “riddled with corruption and nepotism,” he explained that people with money and political clout can pay the police to fabricate charges against someone, including making false allegations against people who are seen as a political threat, who speak out against the leading party, speak out against impunity, or speak out in defense of human rights. He noted that the police subject suspects to arbitrary arrests and detention, and use “torture” against detainees. In his opinion, whether the police would pursue someone who was falsely charged to another state was “subjective” and would depend on the context of the situation.

The VFF legal researcher similarly described the Punjab police as “corrupt” and able to “act with impunity”. She claimed that if the police are suspicious of someone’s activities, they can make “false accusations” of terrorism and put the person on a list of “militants” or “high profile individuals”. She said that targets of the Punjab police include people who are fighting for the rights of the victims of the 1984–85 violence against Sikhs,

²⁵ *Id.*

²⁶ *Id.*

²⁷ IRBC, *India: Ability of Sikhs to Relocate within India*, IND100771.EX, *supra* note 1.

²⁸ Home Office, UK Border Agency, *Operational Guidance Note: India*, *supra* note 9, para. 3.6.10.

people who criticize the police or government for their activities, and members of Sikh youth organizations. She expressed the opinion that the Punjab police and the intelligence service would pursue these people even if they move to another state, that they would be subject to arbitrary arrest, and that their family members would also be pursued.

The WSO legal counsel said that “Sikhs who advocate for independence from India or oppose the ruling party have in the past been falsely implicated in terrorism cases and harassed”. He expressed the opinion that if a person is wanted by the police, it would “be difficult to evade detention and the abuses that often accompany detention such as torture, harassment of family, etc.” Noting Babbar Khalsa as the “default group cited when trying to affiliate an individual with terrorism,” he provided several examples from 2010 and 2011, supported by media articles, in which the Punjab police operated together with other state police forces to apprehend suspects with alleged links to Babbar Khalsa. Arrests of people suspected of having links with Babbar Khalsa in 2010 and 2011 in which different police forces did cooperate include the following:

- in Chhattisgarh;
- in Mumbai, Maharashtra state;
- in Uttar Pradesh;
- in Delhi. In the case from Delhi, the suspects were later released on bail by the courts due to a lack of evidence.²⁹

The UN Committee against Torture considered a complaint against Canada by a member of the Shiromani Akali Dal (Amritsar/Mann) Party who claimed that if he were to be removed to India, “he would be at risk of torture, cruel treatment and even the death sentence due to his alleged connections with Sikh terrorism in the State of Punjab.”³⁰ The case summarizes documentary reports cited by Canada on the human rights situation of members of the Mann party:

4.3 The State party refers to objective documentary reports, according to which the human rights situation for Sikhs in India has improved to the extent that it can no longer be said that there is a general risk of ill-treatment upon return solely on the basis of one’s real or perceived political opinion. While the majority of Sikhs live in the State of Punjab, there are also sizable Sikh minorities in other Indian States and there are Sikh communities all over India. Sikh communities are thriving across the country and many persons of the Sikh faith hold prominent official positions. Moreover, country reports do not suggest that there exists a general risk in India of ill-treatment for members of the Shiromani Akali Dal (Amritsar/Mann) party. The party operates openly. Knowledgeable sources have been quoted as stating that members were not subject to ill-treatment unless the individual was suspected by police of terrorism, extremism or violent activities, and that outspoken members were not harassed or arrested for participating in party gatherings, publicly complaining about the treatment of Sikhs by authorities or calling for the creation of Khalistan. In contrast, other knowledgeable sources have indicated that party members were harassed or arrested at certain times for participating in party gatherings, publicly

²⁹ IRBC, *India: Situation of Sikhs outside the State of Punjab*, IND104369.E, *supra* note 5, § 3.2 (citations omitted).

³⁰ Committee against Torture, Decision Adopted by the Committee under Article 22 of the Convention, Concerning Communication No. 715/2015, CAT/C/62/D/715/2015, ¶ 3.1 (Jan. 9, 2018), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhskiKGYGPahxhaHF7/PZ+WRdSynmDt6goXu5NZaM C4tmEHCsrjZz8DIsvBJU3Zkp8YqhfeGTOW6tf4I+scDowY5LaFJui9B8ZVtM5XvK7dhNzAlmlvCg4qvWnpX4JQ55kw==>, archived at <https://perma.cc/L6VL-S8CG>.

complaining about the treatment of Sikhs or calling for the creation of Khalistan, and that party members had been taken into preventive detention in advance of planned demonstrations. However, even where sources state that Shiromani Akali Dal (Amritsar/Mann) members or leaders were subject to such treatment, they do not indicate that it would occur outside of the State of Punjab. In addition, and more generally, although some knowledgeable sources indicate that Sikhs who advocated for and support a separate Sikh state, or Khalistan, continued to face ill-treatment in the State of Punjab, it has been reported that there existed no general risk of ill-treatment for Sikhs who were returned to India solely on the basis of ideological support for the establishment of Khalistan.³¹

The Immigration and Refugee Board of Canada published a report in 2015 on the treatment of Sikhs in Punjab that makes references to the Mann/Amritsar party:

An October 2014 news article by Sikh Siyasat News reports that at a rally for Prime Minister Narendra Modi, five top leaders of the Shiromani Akal Dal Amritsar (Mann) political party were arrested for waving black flags upon his arrival. The leaders were released on bail later that evening, however dozens of Shiromani Akali Dal (Mann) supporters, who had gathered near the rally spot, were also detained by the police prior to the Prime Minister's arrival (Sikh Siyasat News 4 Oct. 2014). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

...

[An Assistant Professor of political science at Hiram College in Hiram, Ohio, consulted by the IRBC] indicated that the Akali Dal (Amritsar) [a "splinter" Akali Dal party formed in the mid 1990's (Australia 17 Dec. 2009)], and Dal Khalsa [a political group promoting an independent Sikh state in Punjab (Terrorism.com 26 Apr. 2014)], and other "radical" Sikh "ethnonationalist" political parties and organizations "continue to operate above ground" (Assistant Professor 19 Apr. 2015). Furthermore, the Dal Khalsa was able to "contest democratic elections with little hindrance" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Assistant Professor noted that if the government "perceives a threat to communal peace and law-and-order because of specific planned rallies or marches by Sikh ethnonationalists," the state may place leaders of the Sikh political party members and or activists in preventative custody (ibid.). The same source further stated that once in preventative custody, activists usually do not face physical abuse; however, in some instances, activists may "periodically" have "legal cases . . . placed on [them] . . . for secessionist and/or provocative speeches" (ibid.). The representative from the WSO similarly noted that Khalistan advocates are "often" arrested during peaceful protests and are subject to "preventative arrest" (WSO 17 Apr. 2015). Leaders and workers of other Sikh nationalist parties "are routinely detained under preventative detention clauses" (ibid.). According to the Assistant Professor, government officials who perceive Sikh ethnonationalists and activists as a threat to the stability of the ruling government "are subject to police and/or legal harassment" and that those who openly challenge or criticize

³¹ *Id.* ¶ 4.3.

the ruling Akali Dal are “prone to various forms of personal harassment” (Assistant Professor 19 Apr. 2015).³²

³² IRBC, *India: Treatment of Sikhs in Punjab (2013–April 2015)* (May 12, 2015), <https://www.justice.gov/eoir/file/787401/download>, archived at <https://perma.cc/3F6U-FU2T>.